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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,495	01/16/2004	Steven Ryals	BS030588	7687
7590	11/15/2004		EXAMINER	
Scott P. Zimmerman P.O. Box 3822 Cary, NC 27519			GUADALUPE, YARITZA	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/759,495

Applicant(s)

RYALS ET AL.

Examiner

Yaritza Guadalupe McCall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 11 is/are rejected.
- 7) ☒ Claim(s) 3,4 and 6-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/21/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on June 21, 2004 was considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102 ( b ) as being anticipated by Knapp ( US 5,010,657 ).

With respect to claim 1 : Knapp discloses a tape measure end hook assembly comprising a hooking member ( 10 ) for attachment to a free end of the tape rule as shown in Figure 1, the hooking member ( 10 ) comprising a plate section ( 20 ), an elbow section ( 24 ), and an abutment section ( 22 ), said plate section ( 20 ) being used for longitudinal alignment along the free end of the tape rule, the elbow section upwardly curving from the plate section to the abutment section ( See Figures 3 – 4 and 8 – 9 ), the

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abutment section downwardly curving to a substantially perpendicular orientation to the plate section, the abutment section downwardly extending below the tape rule ( See Figure 1 ), and wherein the hooking member is positioned to an article to be measured, and the abutment section contacts and frictionally engages an edge of the article.

In regards to claim 2 : Knapp further discloses said end hook assembly comprising means ( 36, 38 ) for attaching the hooking member to the tape rule, i.e., rivets (36, 38) passing through openings in the tape ( See Column 3, lines 36 – 41 ).

With regards to claim 5 : Knapp also discloses an open-ended notch in the abutment section defined by the curved section provided in the inner wall of the elbow and abutment sections ( See attached Figure 3 ), said open-ended notch upwardly extending from a lower edge of the abutment section.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp (US 5,010,657 ) in view of Quenot ( US 3,131,480 ).

Knapp discloses a tape measure end hook assembly as stated in paragraph 3 above.

Knapp does not disclose the abutment section having an arcuately- shaped lower edge as stated in claim 11.

With respect to claim 11: Knapp discloses an end hook having an abutment section ( 22 ) having a lower portion defined by the free end of the abutment section, said lower portion provided with cutouts ( 26 ), but does not disclose said section having an arcuately- shaped lower edge. Quenot discloses a hooking device ( 2 ) for a measuring tape having an end portion defining an abutment section which has an arcuately- shaped

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lower edge ( See Figure 2 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the lower edge of the abutment section disclosed by Knapp, with an arcuately-shaped lower edge as taught by Quenot in order to increase the versatility of the tool by providing an end hook mechanism that prevents from undesired scratches into the working surface as well as providing a safety feature that prevents the user from injuries by any sharp edges on the tool.

#### *Allowable Subject Matter*

7. Claims 3 – 4 and 6 – 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are considered of relevance to the present application:

- a. Reedy ( US 5,659,970 )
- b. Stenger ( US 6,370,790 )
- c. Elskamp ( US 654,960 )
- d. Herline Jr. ( US 338,410 )

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- e. Langsner ( US 1,646,826 )
- f. Woods ( US 3,965,579 )
- g. Critelli et al. ( US 6,698,679 )
- h. Corso ( US 5,212,875 )
- i. Simmons ( US Pub. No. 2002/0073569 )
- j. Beyers ( US 6,082,014 )
- k. Jones et al. ( US 4,527,334 )
- l. Balota ( US 6,637,126 )

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272 -2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Yaritza Guadalupe-McCall', is written over a horizontal line.

Yaritza Guadalupe-McCall  
Patent Examiner  
Art Unit 2859

YGM  
November 10, 2004